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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th September 2007

No. 10426—1i/1-(BH)-1/97/L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 14th June, 2007 in I. D. Case No.95/97 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial dispute between the Management of M/s. Baripada Spinning Mills, Baripada and its workman Smt. Saraswati Pradhan was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 95 of 1997
Dated the 14th June 2007

Present :

Shri S. K. Mohapatra, O.S.J.S., (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of M/s. Baripada .. First-party—Management
Spinning Mills, Baripada

And

Its workman ,
Smt. Saraswati Pradhan .. Second-party—Workman

Appearances :

Shri P.K.Mohapatra	.. For First-party—Management
Shri S. Pradhan	.. For Second-party—Workman herself

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s. Baripada Spinning Mills, Baripada and its workman Smt. Saraswati Pradhan under Notification No.7559/L.E. dated 27th May 1995 vide Memo. No.11666 (5)/L.E. dated 15th September,1997 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

"Whether the action of the management of Baripada Spinning Mills, Baripada in terminating the services of Smt. Saraswati Pradhan, Reeler-Winder w.e.f. 24th December 1989 is legal and/or justified ? If not, to what relief the workman is entitled ?"

3. Shorn of all unnecessary details, the case of the workman in brief is as follows :

The Second-party workman hereinafter referred to as the workman) has contended that she had been working at Baripada Spinning Mill, Baripada, (hereinafter referred to as the management) since the year 1983 as Reeler-winder, later on her services were regularized and confirmed by the management because of her good performance. The management without any reason whatsoever stopped the workman from entering into the factory premises of the management with effect from 24th December 1989. The workman was not even allowed to meet the General Manager to putforth her grievances. The workman used to come to the gate of the Mill of the management and requested several times to the security man to allow her to go to her duty but she was refused to enter into the Mill premises. Finally in the year 1992 the services of the workman was illegally retrenched by the management with out following the provisions of the Industrial dispute Act, 1947. Thereafter the workman raised an industrial dispute before the District Labour Officer, Baripada who started a conciliation proceeding during which there was a tripartite agreement on 12th January 1993 under which the workman would be allowed to join as 'Badli' worker and kept on the status of 'Badli' worker for a period of one year from the date of her joining and thereafter she would be restored to her regular post subject to the condition that she would attend her duty for a minimum period of 22 days in each month and perform her duty satisfactorily. It was further stipulated in the agreement that she would not claim any financial or service benefits for the period from 24th December 1989 till the date of her joining under the management as a 'Badli' worker. Thereafter the workman continuously attended her duties for more than one year but thereafter again the security man of the Mill did not allow her inside the Mill premises for most of the days stating that 'Badli' workers could not get job regularly. The workman again raised an industrial dispute before the District Labour Officer, Baripada and thereafter the present reference was made. On these averments the workman has claimed for her reinstatement in service alongwith back wages.

4. In their written statement the management have contended that the industrial dispute raised by the workman was amicably settled in a tripartite agreement in presence of the District Labour Officer, Baripada on 12th January 1993 and therefore there was no point to make a reference by the Government of Orissa to the Court for adjudication of the matter which had already been settled by a tripartite agreement binding on both the workman and the management and therefore the present reference is bad in the eye of law. The workman was initially appointed as Reeler-winder with effect from 1st July 1986 but she absconded from her employment since 24th December 1989 for which a show cause notice was issued to the workman by the management vide letter No.3515 dated 19th December 1990 and thereafter two more show cause notice vide letter Nos. BSM/PNL/1094 dated 8th April 1992 and BSM/PNL/873 dated 14th March 1992 had been in the permanent address of the workman but all those show cause notice returned with postal remark either "Address is not known" or "Addressee is long absent". After the tripartite agreement dated 12th January 1993 the workman joined her duty on 14th January 1993 but frequently and habitually remained absent from her duty. A detail chart of the period of absence of the workman for the year 1993-94 has been given by the management in its written

statement. During her entire service period the workman had never worked for 240 days during any calendar year to make her eligible for any retrenchment compensation. The workman was warned several times for her conduct of remaining frequently absent from her duty. The management concern i.e. Baripada Spinning Mill has been declared a sick unit by the BIPR on 25th September 1996 and the BIFR has recommended for its winding up by its order dated 27th April 2000. The order of BIPR has been confirmed by AAIFR by its order dated 9th April 2001. At present a proceeding under the companies Act vide case No.4 of 2002 is pending before the Hon'ble Court of Orissa in order to liquidate the management concern. In such a situation the regularisation of the workman in her post does not arise at all. On these averments the management has contended that the workman is not entitled to any relief whatsoever.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) "Whether the action of the management of Baripada Spinning Mill, Baripada is terminating the services of Smt. Saraswati Pradhan, Reeler-Winder with effect from 24th December 1989 is legal and/or justified ?
- (ii) If not, to what relief she is entitled to ? "

6. Issue No. (i) :— The workman has examined herself as W.W.1. In her evidence she has deposed that she had been working under the management as a Reeler-Winder since the year 1983-84 and was regularised in her services in the year 1985-86. Further evidence of W.W.1 is that since the year 1983 she worked continuously till 24th December 1989 when her service was terminated by the management without any reason and without giving her any prior notice or notice pay and retrenchment compensation. According to W.W.1 no charge sheet had been framed and there was no enquiry against her. In her evidence W.W.1 has stated about raising of an industrial dispute before the District Labour Officer, Baripada in which presence a tripartite agreement dated 12th January 1993. Ext.1 (xerox copy) was reached between herself and the management. The workman has proved the xerox copies of her identity cards as Exts. 2,3,4 and 5 and Ext.6 is the xerox copy of the sanction of advance towards Provident Fund. In her cross-examination W.W.1 has admitted that in her application for job Ext.A to the management she had given her present and permanent address. In her cross-examination W.W.1 has further stated that after tripartite agreement Ext.1 she was not allowed inside the Mill premises and that she did not remember as to who did not allow her to enter inside the Mill premises. On an analysis of the evidence of Ext.1 it is seen that the industrial dispute arising out of her alleged termination from service with effect from 24th December 1989 was resolved through tripartite agreement Ext.1. In Ext.1 it has been specially mentioned that the workman would not claim any financial and service benefits for the period from 24th December 1989 to the date of her joining under the management as a 'Badli' worker. The reference of the Government of Orissa under sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D.Act) is confined to the alleged termination of the workman with effect from 24th December 1989. In this context it is to be first examined as to whether the workman was in continuous service as defined under Section 25-B of the I.D.Act. In the decision Range Forest Officer V.S.T.Hadimani reported in 2002-I LIJ. 1053 (S.C.). The Hon'ble Supreme Court have held that the burden of proof of continuous service within the meaning of Section 25-B of the I.D.Act lies squarely on the workman. In her evidence W.W.1 has not

proved any document to show that she was in continuous service under the management since the date of her joining till 24th December 1989. The identity cards Exts.3 to 5 of no help to the workman in the matter. Ext.2 relates to the year 1995 which is beyond the scope of the reference. Ext.6 relates to the year 2003 and therefore it is not relevant for the purpose of this case.

7. On the other hand, W.W.1 who is in charge of Baripada Spinning Mill in his evidence has stated that the workman was frequently remaining absent from her duty unauthorisedly and she stopped her duty since 24th December 1989. M.W.1 has proved Ext.B which is a letter dated 14th March 1992 under which the management intimated the workman that her name had been struck off from the Company's muster roll. Exts. C and C/1 are the xerox copies of the notice regarding her unauthorised absence from her duty. The show cause notices Ext.C is dated 19th December 1990 under which it has been alleged that the workman had absconded from her duty since 24th December 1989. The postal covers under which registered notices to the workman returned back with endorsement of Postal Authorities that the workman was long absent in her address have been proved as Exts. D/1 and C/1. Document Ext. E/1 shows that the workman had worked only 50 days in the year 1989 and for 49.5 days in the year 1988. Thus it is obvious that the workman was not in continuous services under the management from the date of her joining in service till the date of her alleged retrenchment from service on 24th December 1989. Therefore, the workman is not entitled to the benefit of Section 25-F of the I.D.Act and consequently the alleged retrenchment from her service by the management without giving one month's notice or notice pay or any retrenchment compensation is not illegal. Hence, the termination of service of the workman Smt. Saraswati Pradhan with effect from 24th December 1989 is legal and justified. The issue No. (i) is answered accordingly.

8. Issue No. (ii) :—In view of my answer to Issue No. (i), the workman is not entitled to any relief whatsoever. The Issue No. (ii) is answered accordingly.

The reference is answered accordingly.

Dictated and corrected by me.

S.K.MOHAPATRA
14-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K.MOHAPATRA
14-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor
N.C.RAY
Under-Secretary to Government